

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.289 of 2011

Chaitanya Behera

Petitioner

Mr. K.K. Swain, Advocate

-versus-

State of Odisha and another

Opp. Parties

Mr. P.K. Muduli, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K.PATTANAIK

ORDER

06.04.2022

Order No.

Dr. S. Muralidhar, CJ.

13.

1. The Petitioner who retired as Deputy Superintendent of Police (DSP) has filed the present petition challenging an order dated 16th December, 2010 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (OAT) in O.A. No.2400 (C) of 2009. By the impugned order, the OAT declined the prayer of the Petitioner that the adverse entries in his Confidential Character Rolls (CCRs) for the period from 7th June, 1999 to 18th November, 2000 should be expunged and that he must be given ante dated promotion in the rank of DSP from the year 2003 onwards when his juniors were given such promotion. He had also prayed for consequential promotion to the rank of Additional SP from 2010 onwards.

2. At the outset, it should be mentioned that during pendency of the writ petition the Petitioner has superannuated and therefore the reliefs are relevant as far as his pensionary benefits are concerned.

3. The Petitioner joined the police force as Sub-Inspector of Police on 6th June 1976. Subsequently he was promoted to the rank of Inspector in 1993. While working as Inspector of Police, Inspector-in-Charge (IIC), Tangarpali Police Station within the Rourkela Police district, an adverse entry in his CCR was communicated to him in the year 2001 by the DIG, Western Range (WR), Rourkela. This pertained to period from 7th June 1999 to 18th November 2000. The adverse entry read as under:

“Review of the confidential report on your work for the year 1999-2000 (from 12.1.2000 to 18.11.2000) reveals that you were a below average officer. You absconded from your duty post without authorization and intimation for a prolonged period. You could not be entrusted with any major responsibility or duty.

Government hope you will try to improve.

If you wish to make any representation against the above adverse remarks, you may do so (in quadruplicate) within 45 days of receipt of this letter.”

4. On the same charges, a disciplinary proceeding was initiated against the Petitioner by the DIG, WR, Rourkela in 2001. By a letter dated 13th September, 2001, the charges were communicated to the Petitioner. The two charges against the Petitioner read as under:

“1. During his incumbency at Rourkela Police district, he was transferred on administrative grounds to Keonjhar District on account of his highly suspicious and motivated conduct in investigation of a sensational armed Bank dacoity in Tangarpalli P.S. case No.120 dated

15.9.99 U/S 395 IPC/25 Arms Act. He was directed to handover charge of Tangarpalli P.S. by 30.10.99 vide S.P., Rourkela's letter No.3772/E dt.25.10.99, but instead of doing so he reported sick.

2. Although he reported for duty on 18.3.2000 in the Keonjhar district, he absconded from duty and remained absent unauthorisedly from 18.3.2000 to 15.6.2000.”

5. The disciplinary enquiry continued for four long years during which time the Petitioner's juniors were promoted as DSPs in 2003. The Petitioner's case for promotion was kept in a sealed cover since the enquiry was pending. In the gradation list of the DSPs published, as of 1st April, 1999, the Petitioner's position was Sl. No.248 whereas his juniors from Sl. Nos.249 to 262 were promoted DSPs in 2003. On 14th December, 2004 the Petitioner received a communication from the Principal Secretary to the Government that he stood completely exonerated in the disciplinary enquiry.

6. On 15th December, 2004 the Petitioner made a representation to the Principal Secretary, Home Department for expunction of the adverse remarks in the CCRs. However, it was not considered. Ultimately, the Petitioner was promoted as DSP by Notification dated 27th March, 2008.

7. In the above background, the Petitioner filed O.A. No.1049 (C) of 2009 in the OAT claiming promotion as DSP from the year 2003 when his juniors so got promoted.

8. On 8th May, 2009 the OAT disposed of the above OA directing the Principal Secretary, Home Department to treat the application as representation and pass appropriate orders on merit considering the fact that the Petitioner was exonerated in the disciplinary proceeding.

9. With the Government delaying the disposal of his representation, the Petitioner again approached the OAT with OA No.2400 (C) of 2009. Thereafter by an order dated 13th October, 2009 the Petitioner's representation for retrospective promotion as DSP from 2003 was rejected by the Government of Orissa. Consequently, in the pending application the Petitioner filed an additional verification in which he pointed out that during the period from 1st April, 2000 to 18th November 2000, he had worked only for 11 days as he was on leave on medical grounds and the said leave period was sanctioned by the DIG of Police. He submitted that in terms of the Government Circular dated 19th May, 2004 the DIG, WR, could not have given him adverse remarks in the CCR for the aforementioned period since he worked for less than three months under the DIG, WR. The Petitioner filed second additional verification on 20th June 2010 reiterating the above submission. He also enclosed the Notification dated 7th January, 2010 by which his juniors got further promotion to the rank of Additional SP.

10. Thereafter the impugned order was passed by the OAT declining the prayers of the Petitioner. Interestingly one

portion of the prayer of the Petitioner was accepted by the OAT viz., that for the period from 7th June 1999 till 13th July 2000 the adverse entries did not have any legal basis since they overlapped the charge in the departmental proceedings in which the Petitioner was fully exonerated.

11. The OAT apparently split up the period of the adverse entries in the Petitioner's CCR into two i.e. the period from 7th June 1999 to 12th January 2000 and then from 12th January 2000 to 18th November 2000. This was on the basis of the stand taken by the Opposite Party before the OAT that in terms of an amendment by a G.A. Department Circular dated 14th July, 2000 the previous system of the reporting authority and countersigning (reviewing) authority for a CCR of an Inspector of Police was changed from SP of a district and the DIG of Police, Range respectively as under:

<u>"Reporting Authority</u>	<u>Countersigning Authority</u>	<u>Accepting Authority</u>
DSP/SDPO	S.P., District	DIGP, Range

The Opposite Party further contended as under:

"According to the provision mentioned above, the then DIGP, W.R., Rourkela has recorded his remarks as Reviewing Authority in the CCR of Sri Behera for the period from 7.6.99 to 12.1.2000 and as Accepting Authority from 12.1.2000 to 18.11.2000."

12. Consequently as far as the period 12th January 2000 to 18th November 2000, the OAT held that the adverse remarks of the DIGP, WR Range still continued in the Petitioner's CCR for the said period and therefore there was no basis for granting

the Petitioner retrospective promotion as DSP from 2003 onwards.

13. This Court has heard the submissions of Mr. K.K. Swain, learned counsel for the Petitioner and Mr. P.K. Muduli, learned AGA for the State.

14. There is merit in the contention of Mr. Swain that there is an overlap for the period for which the adverse entry in the CCR continued and the period for which charge in the disciplinary proceedings was framed. As already noticed, the second charge in the disciplinary proceedings was about the Petitioner having absconded from 18th March 2000 till 15th June 2000. Since the Petitioner stood exonerated on this charge the adverse remarks of the DIGP WR for the entire period up to 15th June 2000 did not hold good.

15. As far as the subsequent period i.e. 16th March 2000 till 18th November 2000, the Petitioner has rightly pointed out that in terms of the Government's own circular dated 23rd November 1987 for recording entries in the CCRs the minimum period of review shall be three months in a year. The relevant portion of the Circular dated 23rd November 1987 which has been reiterated in subsequent Circular dated 19th May 2004 reads as under:

“The minimum period for recording remarks in the C.C.R. of an officer shall be three months in year. A superior officer or authority should not record his remarks about a subordinate work

unless he has seen it for a minimum period of three months.”

16. It is, therefore, apparent that the DIG, WR could not have recorded the adverse entry in the Petitioner’s CCR for the above period since admittedly the Petitioner worked under him only for 11 days during that period. The document sanctioning the leave for the remaining period has been placed on record.

17. Mr. Muduli sought to contend that the above plea was not taken by the Petitioner before the OAT and therefore he should not be permitted to urge it for the first time before this Court. Mr. Swain has pointed out that in the additional verification filed by the Petitioner before the OAT, a copy of which has been enclosed with the present petition, this plea has specifically taken in paragraph-3. Moreover, in paragraph-24 of the present petition, it has been specifically taken and the Circular dated 23rd November 1987 has also been enclosed. There has been no reply filed to the present petition by the Opposite Party.

18. In almost similar circumstances, this Court in ***Samir Kumar Ray v. State of Orissa 82 (1996) CLT 411*** granted relief to the Petitioner in that case after noticing that the CCR entries was for the same period for which the departmental proceeding was initiated and which were subsequently dropped. It was held that this tantamounted to wiping out the adverse entries in the CCR altogether.

19. The decisions in ***Badrinath v. Government of Tamil Nadu*** AIR 2000 SC 3243 and ***Harbans Singh v. State of Punjab*** 1995 SCC (L&S) 1294 support the case of the Petitioner for being granted retrospective promotion as DSP from the date his juniors got so promoted.

20. In view of the above discussion, this Court directs as under:

- (i) The impugned order dated 16th December, 2010 of the OAT in O.A. No.2400 (C) of 2009 is hereby set aside to the extent it declines relief to the Petitioner of expunging the CCR for the period 12th January 2000 to 18th November 2000 and retrospective promotion as DSP from 2003 onwards;
- (ii) The adverse entry in the CCR for the above period are directed to be expunged;
- (iii) The Petitioner shall be given retrospective promotion as DSP from 2003 onwards, i.e. the date on which his juniors were so promoted;
- (iv) An extraordinary DPC will be constituted within four weeks to consider to the case of the Petitioner for notional promotion as Additional SP from the date his juniors were so promoted, in accordance with law;
- (v) While the Petitioner will not receive any arrears of pay as a result of such retrospective promotion as DSP and Additional SP, his pension will be re-worked and an appropriate order in that regard be passed within a period of twelve weeks from today;

(vi) The arrears of differential pension will be paid to the Petitioner within a further period of four weeks thereafter.

21. The writ petition is disposed of in the above terms, with no order as to costs.

22. An urgent certified copy of this order be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge



KC Bisoi